

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT LINDSEY,)	
)	
Petitioner,)	
)	
v.)	No. 4:09CV000267 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

MEMORANDUM AND OPINION

This matter is before the Court on Petitioner Robert Lindsey's "Rule 15(c) Relation Back Motion to An Section 2255" [ECF No. 41]. Petitioner asks leave of the Court to amend claim two of his prior habeas proceeding.

Petitioner filed his original Motion to Vacate, Set Aside, or Correct Sentence on February 27, 2009. He filed a supplement to his motion on December 10, 2009. The Court denied Petitioner's Motion and entered judgment in favor of Respondent United States of America on November 30, 2010. Petitioner filed a Motion for Reconsideration pursuant to Rule 59(e), which the court reclassified and dismissed as a successive § 2255 motion. The Eighth Circuit did not grant Petitioner a certificate of appealability.

Petitioner's attempt to amend his prior § 2255 motion pursuant to Federal Rule of Civil Procedure 15 is another attempt to file a successive § 2255 motion. *See United States v. Lambros*, 404 F.3d 1034, 1036 (8th Cir. 2005) ("It is well established that inmates may not bypass the authorization requirement of 28 U.S.C. § 2254(b)(3) for filing a second or successive § 2254 or § 2255 action by purporting to invoke some other procedure."). Without authorization from the Eighth

Circuit Court of Appeals, this Court must dismiss Petitioner's Motion. *Boyd v. United States*, 304 F.3d 813, 814 (8th Cir. 2002).

Additionally, even if Petitioner's Motion was not barred as a successive habeas petition, Rule 15 would not apply because a final judgment has been entered in this matter. Once a final judgment has been entered, a party cannot seek to amend its pleadings without first successfully vacating the judgment. *See Smith v. Hogan*, 794 F.3d 249, 256 (2d Cir. 2015); *Figgie Intern. Inc. v. Miller*, 966 F.2d 1178, 1179 (7th Cir. 1992); *The Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005) (listing sister circuits which also hold a judgment must be vacated before a pleading can be amended under Rule 15 including the First, Second, Third, Fifth, Sixth, Seventh, Ninth and District of Columbia Circuit Courts of Appeals.).

Accordingly,

IT IS HEREBY ORDERED Petitioner Robert Lindsey's "Rule 15(c) Relation Back Motion to An Section 2255" [ECF No. 41] is **DENIED**.

So Ordered this 27th day of October, 2016.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE